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11 ALMEDA

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 GUADALUPE BARRAGAN, as Personal
15 Representative of the Estate of FRED
16 BARRAGAN and individually;

17 Plaintiff,

18 v.

19 CITY OF LOS ANGELES, a
20 Governmental Entity; HECTOR
21 ALMEDA, Individually; and DOES
22 1 Through 10,

23 Defendants.

CASE NO. CV17-04364 R (AGR_x)

**ANSWER OF DEFENDANTS CITY
OF LOS ANGELES, OFFICER
HECTOR ALMEDA, and DOES 1
THROUGH 10 TO PLAINTIFF'S
COMPLAINT FOR DAMAGES;
DEMAND FOR JURY TRIAL**

24 COMES NOW, Defendants CITY OF LOS ANGELES and OFFICER
25 HECTOR ALMEDA answering the Plaintiff's Complaint for Damages for themselves
26 and for no other party, admitting, denying, and alleging as follows:

27 1. Answering paragraph 1, defendants lack sufficient information and belief
28 upon which to answer the allegations contained therein, and on that basis deny the
allegations.

1 2. Answering paragraph 2, defendants lack sufficient information and belief
2 upon which to answer the allegations contained therein, and on that basis deny the
3 allegations.

4 3. Answering paragraph 3, defendants lack sufficient information and belief
5 upon which to answer the allegations contained therein, and on that basis deny the
6 allegations.

7 4. Answering paragraph 4, defendants admit the allegations contained
8 therein, except for the allegations pertaining to as yet unnamed Doe Defendants, which
9 are denied for lack of sufficient information and belief.

10 5. Answering paragraph 5, defendants lack sufficient information and belief
11 upon which to answer the allegations contained therein, and on that basis deny the
12 allegations.

13 6. Answering paragraph 6, defendants lack sufficient information and belief
14 upon which to answer the allegations contained therein, and on that basis deny the
15 allegations.

16 7. Answering paragraph 7, defendants lack sufficient information and belief
17 upon which to answer the allegations contained therein, and on that basis deny the
18 allegations.

19 8. Answering paragraph 8, defendants lack sufficient information and belief
20 upon which to answer the allegations contained therein, and on that basis deny the
21 allegations.

22 9. Answering paragraph 9, defendants lack sufficient information and belief
23 upon which to answer the allegations contained therein, and on that basis deny the
24 allegations.

25 10. Answering paragraph 10, defendants lack sufficient information and belief
26 upon which to answer the allegations contained therein, and on that basis deny the
27 allegations.
28

1 11. Answering paragraph 11, defendants lack sufficient information and belief
2 upon which to answer the allegations contained therein, and on that basis deny the
3 allegations.

4 12. Answering paragraph 12, defendants admit the allegations contained
5 therein.

6 13. In answering paragraph 13, of Plaintiff's Complaint, these Defendants
7 incorporate by reference their answers to paragraphs 1 through 12, of Plaintiff's
8 Complaint and by this reference incorporate the same herein.

9 14. Answering paragraph 14, defendants lack sufficient information and belief
10 upon which to answer the allegations contained therein, and on that basis deny the
11 allegations.

12 15. Answering paragraph 15, defendants lack sufficient information and belief
13 upon which to answer the allegations contained therein, and on that basis deny the
14 allegations.

15 16. Answering paragraph 16, defendants lack sufficient information and belief
16 upon which to answer the allegations contained therein, and on that basis deny the
17 allegations.

18 17. Answering paragraph 17, defendants lack sufficient information and belief
19 upon which to answer the allegations contained therein, and on that basis deny the
20 allegations.

21 18. Answering paragraph 18, defendants lack sufficient information and belief
22 upon which to answer the allegations contained therein, and on that basis deny the
23 allegations.

24 19. Answering paragraph 19, defendants lack sufficient information and belief
25 upon which to answer the allegations contained therein, and on that basis deny the
26 allegations.

27 20. Answering paragraph 20, defendants lack sufficient information and belief
28 upon which to answer the allegations contained therein, and on that basis deny the
allegations.

1 21. Answering paragraph 21, defendants lack sufficient information and belief
2 upon which to answer the allegations contained therein, and on that basis deny the
3 allegations.

4 22. Answering paragraph 22, defendants lack sufficient information and belief
5 upon which to answer the allegations contained therein, and on that basis deny the
6 allegations.

7 23. Answering paragraph 23, defendants lack sufficient information and belief
8 upon which to answer the allegations contained therein, and on that basis deny the
9 allegations.

10 24. Answering paragraph 24, defendants lack sufficient information and belief
11 upon which to answer the allegations contained therein, and on that basis deny the
12 allegations.

13 25. In answering paragraph 25 of Plaintiff's Complaint, these Defendants
14 incorporate by reference their answers to paragraphs 1-2 and 14-24 of Plaintiff's
15 Complaint and by this reference incorporate the same herein.

16 26. Answering paragraph 26, defendants lack sufficient information and belief
17 upon which to answer the allegations contained therein, and on that basis deny the
18 allegations.

19 27. Answering paragraph 27, defendants lack sufficient information and belief
20 upon which to answer the allegations contained therein, and on that basis deny the
21 allegations.

22 28. Answering paragraph 28, defendants lack sufficient information and belief
23 upon which to answer the allegations contained therein, and on that basis deny the
24 allegations.

25 29. Answering paragraph 29, defendants lack sufficient information and belief
26 upon which to answer the allegations contained therein, and on that basis deny the
27 allegations.
28

1 30. Answering paragraph 30, defendants lack sufficient information and belief
2 upon which to answer the allegations contained therein, and on that basis deny the
3 allegations.

4 31. Answering paragraph 31, defendants lack sufficient information and belief
5 upon which to answer the allegations contained therein, and on that basis deny the
6 allegations.

7 32. Answering paragraph 32, defendants lack sufficient information and belief
8 upon which to answer the allegations contained therein, and on that basis deny the
9 allegations.

10 33. In answering paragraph 33 of Plaintiff's Complaint, these Defendants
11 incorporate by reference their answers to paragraphs 1-2 and 14-24 of Plaintiff's
12 Complaint and by this reference incorporate the same herein.

13 34. Answering paragraph 34, defendants lack sufficient information and belief
14 upon which to answer the allegations contained therein, and on that basis deny the
15 allegations.

16 35. Answering paragraph 35, defendants lack sufficient information and belief
17 upon which to answer the allegations contained therein, and on that basis deny the
18 allegations.

19 36. Answering paragraph 36, defendants lack sufficient information and belief
20 upon which to answer the allegations contained therein, and on that basis deny the
21 allegations.

22 37. Answering paragraph 37, defendants lack sufficient information and belief
23 upon which to answer the allegations contained therein, and on that basis deny the
24 allegations.

25 38. In answering paragraph 38 of Plaintiff's Complaint, these Defendants
26 incorporate by reference their answers to paragraphs 1-2 and 14-24 of Plaintiff's
27 Complaint and by this reference incorporate the same herein.
28

1 39. Answering paragraph 39, defendants lack sufficient information and belief
2 upon which to answer the allegations contained therein, and on that basis deny the
3 allegations.

4 40. Answering paragraph 40, defendants lack sufficient information and belief
5 upon which to answer the allegations contained therein, and on that basis deny the
6 allegations.

7 41. Answering paragraph 41, defendants lack sufficient information and belief
8 upon which to answer the allegations contained therein, and on that basis deny the
9 allegations.

10 42. Answering paragraph 42, defendants lack sufficient information and belief
11 upon which to answer the allegations contained therein, and on that basis deny the
12 allegations.

13 43. Answering paragraph 43, defendants lack sufficient information and belief
14 upon which to answer the allegations contained therein, and on that basis deny the
15 allegations.

16 44. Answering paragraph 44, defendants lack sufficient information and belief
17 upon which to answer the allegations contained therein, and on that basis deny the
18 allegations.

19 45. In answering paragraph 45 of Plaintiff's Complaint, these Defendants
20 incorporate by reference their answers to paragraphs 1-2 and 14-24 of Plaintiff's
21 Complaint and by this reference incorporate the same herein.

22 46. Answering paragraph 46, defendants lack sufficient information and belief
23 upon which to answer the allegations contained therein, and on that basis deny the
24 allegations.

25 47. Answering paragraph 47, defendants lack sufficient information and belief
26 upon which to answer the allegations contained therein, and on that basis deny the
27 allegations.
28

1 48. Answering paragraph 48, defendants lack sufficient information and belief
2 upon which to answer the allegations contained therein, and on that basis deny the
3 allegations.

4 49. Answering paragraph 49, defendants lack sufficient information and belief
5 upon which to answer the allegations contained therein, and on that basis deny the
6 allegations.

7 50. Answering paragraph 5, defendants lack sufficient information and belief
8 upon which to answer the allegations contained therein, and on that basis deny the
9 allegations.

10 51. In answering paragraph 51 of Plaintiff's Complaint, these Defendants
11 incorporate by reference their answers to paragraphs 1-2 and 14-24 of Plaintiff's
12 Complaint and by this reference incorporate the same herein.

13 52. Answering paragraph 52, defendants lack sufficient information and belief
14 upon which to answer the allegations contained therein, and on that basis deny the
15 allegations.

16 53. Answering paragraph 53, defendants lack sufficient information and belief
17 upon which to answer the allegations contained therein, and on that basis deny the
18 allegations.

19 54. Answering paragraph 54, defendants lack sufficient information and belief
20 upon which to answer the allegations contained therein, and on that basis deny the
21 allegations.

22 55. Answering paragraph 55, defendants lack sufficient information and belief
23 upon which to answer the allegations contained therein, and on that basis deny the
24 allegations.

25 56. Answering paragraph 56, defendants lack sufficient information and belief
26 upon which to answer the allegations contained therein, and on that basis deny the
27 allegations.
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1 57. In answering paragraph 57 of Plaintiff's Complaint, these Defendants
2 incorporate by reference their answers to paragraphs 1-2 and 14-24 of Plaintiff's
3 Complaint and by this reference incorporate the same herein.

4 58. Answering paragraph 58, defendants lack sufficient information and belief
5 upon which to answer the allegations contained therein, and on that basis deny the
6 allegations.

7 59. Answering paragraph 59, defendants lack sufficient information and belief
8 upon which to answer the allegations contained therein, and on that basis deny the
9 allegations.

10 60. Answering paragraph 60, defendants lack sufficient information and belief
11 upon which to answer the allegations contained therein, and on that basis deny the
12 allegations.

13 61. In answering paragraph 61 of Plaintiff's Complaint, these Defendants
14 incorporate by reference their answers to paragraphs 1-2 and 14-24 of Plaintiff's
15 Complaint and by this reference incorporate the same herein.

16 62. Answering paragraph 62, defendants lack sufficient information and belief
17 upon which to answer the allegations contained therein, and on that basis deny the
18 allegations.

19 63. Answering paragraph 63, defendants lack sufficient information and belief
20 upon which to answer the allegations contained therein, and on that basis deny the
21 allegations.

22 64. Answering paragraph 64, defendants lack sufficient information and belief
23 upon which to answer the allegations contained therein, and on that basis deny the
24 allegations.

25 65. Answering paragraph 65, defendants lack sufficient information and belief
26 upon which to answer the allegations contained therein, and on that basis deny the
27 allegations.
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1 66. Answering paragraph 66, defendants lack sufficient information and belief
2 upon which to answer the allegations contained therein, and on that basis deny the
3 allegations.

4 67. Answering paragraph 67, defendants lack sufficient information and belief
5 upon which to answer the allegations contained therein, and on that basis deny the
6 allegations.

7 68. Answering paragraph 68, defendants lack sufficient information and belief
8 upon which to answer the allegations contained therein, and on that basis deny the
9 allegations.

10 69. In answering paragraph 69 of Plaintiff's Complaint, these Defendants
11 incorporate by reference their answers to paragraphs 1-2 and 14-24 of Plaintiff's
12 Complaint and by this reference incorporate the same herein.

13 70. Answering paragraph 70, defendants lack sufficient information and belief
14 upon which to answer the allegations contained therein, and on that basis deny the
15 allegations.

16 71. Answering paragraph 71, defendants lack sufficient information and belief
17 upon which to answer the allegations contained therein, and on that basis deny the
18 allegations.

19 72. Answering paragraph 72, defendants lack sufficient information and belief
20 upon which to answer the allegations contained therein, and on that basis deny the
21 allegations.

22 73. Answering paragraph 73, defendants lack sufficient information and belief
23 upon which to answer the allegations contained therein, and on that basis deny the
24 allegations.

25 74. Answering paragraph 74, defendants lack sufficient information and belief
26 upon which to answer the allegations contained therein, and on that basis deny the
27 allegations.
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1 75. Answering paragraph 75, defendants lack sufficient information and belief
2 upon which to answer the allegations contained therein, and on that basis deny the
3 allegations.

4 **AFFIRMATIVE DEFENSES**

5 As separate and distinct affirmative defenses, defendant alleges each of the
6 following:

7 1. The damages alleged were directly and proximately caused and
8 contributed to by the negligence of FRED BARRAGAN ("BARRAGAN"), and the
9 extent of damages sustained, if any, should be reduced in proportion to the amount of
10 said negligence.

11 2. The damages alleged were directly and proximately caused and
12 contributed to by the negligence of other persons, and the extent of damages sustained,
13 if any, should be reduced in proportion to the amount of said negligence.

14 3. BARRAGAN had actual knowledge of the condition and particular
15 danger alleged, knew and understood the degree of the risk involved, and voluntarily
16 assumed such risk.

17 4. The force used against BARRAGAN, if any, was caused and necessitated
18 by the actions of BARRAGAN, and was reasonable and necessary for self-defense.

19 5. The force used against BARRAGAN, if any, was caused and necessitated
20 by the actions of BARRAGAN, and was reasonable and necessary for the defense of
21 others.

22 6. The state claims are barred for plaintiff's failure to comply with the
23 provisions of the California Tort Claims Act, Government Code § 910 et seq.

24 7. The action should be abated in that all of the heirs of decedent have not
25 been joined as parties.

26 8. The action is barred for lack of standing to sue.

27 9. Plaintiff failed to mitigate his/her damages.

28 10. As to the federal claims and theories of recovery, the answering defendant
is protected from liability under the doctrine of qualified immunity, because defendant's

1 conduct did not violate clearly established statutory or constitutional rights of which a
2 reasonable person would have known.

3 11. Defendant City of Los Angeles and all defendants sued in their official
4 capacities are immune from the imposition of punitive damages.

5 12. Defendants are immune from liability pursuant to the provisions of each
6 of the following California statutes, each of which is set forth as a separate and distinct
7 affirmative defense: Cal. Gov't Code §§ 815.2, 818, 820.2, 820.4, and 820.8.

8 **DEMAND FOR JURY TRIAL**

9 Defendants hereby demand and request a trial by jury in this matter.

10 WHEREFORE, Defendants pray for judgment as follows:

- 11 1. That plaintiff takes nothing by this action;
12 2. That the action be dismissed;
13 3. That defendants be awarded costs of suit;
14 4. That defendants be awarded other and further relief as the Court
15 may deem just and proper, including an award of attorney's fees pursuant to 42 U.S.C.
16 § 1988.

17 Dated: July 12, 2017

MICHAEL N. FEUER, City Attorney
THOMAS H. PETERS, Chief Assistant City Attorney
CORY M. BRENT, Assistant City Attorney

18 By: /S/ Michael Amerian
19 **MICHAEL R. AMERIAN**, Deputy City Attorney

20 *Attorneys for Defendants* CITY OF LOS ANGELES and
21 OFFICER HECTOR ALMEDA
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